88-1445

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

JAMES E. DIXON,
Petitioner

v.

PENROD DRILLING COMPANY,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

Foremost, whether the Court below has applied long-established precedents of the Supreme Court in regard to proof of negligence in Jones Act cases of "even in the slightest".

Further, whether an appellate court may reverse a jury verdict entered in favor of a Plaintiff in a Jones Act proceeding simply because different inferences could be drawn by evidence reflecting a Defendant's negligence.

Finally, whether a finding by the jury of contributory negligence on the part of the Plaintiff in a Jones Act proceeding can operate to bar recovery against a Defendant.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page

TABLE OF AUTHORITIES—Continued

STATUTES

IN THE

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No. ———

JAMES E. DIXON,

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v.

PENROD DRILLING COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

James E. Dixon, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on March 30, 1988.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported and is printed in Appendix A hereto, *infra*, page 2a. The judgment of the United States Court of Appeals for the Fifth Circuit is printed in Appendix A hereto, *infra*, page 8a. The Journal Entry of Judgment of the United States District

Court for the Eastern District of Louisiana is printed in Appendix A hereto, *infra*, page 9a.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit (Appendix A, *infra*, page 8a) was entered on March 30, 1988. A timely petition for rehearing was denied on April 26, 1988 (Appendix A, *infra*, page 1a). The jurisdiction of the Supreme Court is invoked under 28 U.S.C., Section 1254(1).

STATUTE INVOLVED

This case involves 46 U.S.C., Section 688(a), which provides as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located".

STATEMENT OF THE CASE

Petitioner, Plaintiff and Appellee below, instituted this proceeding against the Defendant-Appellant, Penrod Drilling Company ("Penrod"), to recover damages to compensate him for personal injuries he sustained while performing his duties as a Rig Mechanic for Penrod

aboard Penrod's Rig 63 on July 6, 1983. In part, Petitioner averred that he was entitled to recover damages from Penrod pursuant to the Merchant Marine (Jones) Act, Title 46, United States Code, Section 688, et seq., based upon Penrod's negligence in causing or bringing about Petitioner's injuries. Petitioner thus averred that a sump valve which he was required to operate in discharge of his responsibilities for Penrod was defective, and thus constituted a dangerous and unsafe condition for Petitioner to perform his duties on behalf of Penrod in violation of the provisions of the Jones Act.

Trial of the above captioned proceeding was commenced under date of February 9, 1987, before the Honorable Lansing L. Mitchell, and continued through February 11, 1987. At the close of Petitioner's case, Defendant moved for a directed verdict, which the Court duly denied. The jury subsequently returned a verdict in favor of the Petitioner and against Penrod in the amount of $501,706.00, in which the jury found that Penrod was negligent and thus liable for damages to Petitioner pursuant to the Jones Act. Because the jury likewise concluded that the Petitioner was fifty (50%) percent contributorily negligent, the jury verdict was reduced for purposes of Judgment to the sum of $250,853.00, which Judgment was entered by the Court under date of February 20, 1987.

Penrod filed a litany of post-trial Motions which were denied. Clearly, the trial court believed that there was not a complete absence of probative facts to support the verdict of Petitioner, as the Appellate Court as stated.

The ample evidence presented before the District Court in this case confirms that Petitioner was injured during the course of attempting to operate a valve situated within the air-compressor room on board Penrod's Rig 63. The Petitioner was employed as a Rig Mechanic by Defendant and was stationed aboard Defendant's Penrod 63, a three-legged jack-up rig, situated within the waters of

the Gulf of Mexico, off of the Louisiana Coast. As part of Petitioner's usual and customary duties aboard Penrod 63, and in performing the discharge of his duties as Rig Mechanic thereon, Petitioner was required to attempt to release a sump valve situated in the air-compressor compartment of the vessel. Petitioner was thus required to perform this task in order to contribute to the function of the vessel's regular operation and maintenance, and to further comply with his duties as Rig Mechanic on behalf of Penrod.

Petitioner testified that, as he attempted to release the subject valve, it refused to release as it, and others like it, were normally and customarily released. Rather, the valve was stuck and refused to properly turn or otherwise release in the customary and proper manner. Petitioner utilized the normal procedure prescribed by Penrod to attempt to open the valve, but was required to exert extra force and pressure upon the T-tool utilized to operate the subject valve in an effort to release it and discharge his duties on behalf of Penrod. As Petitioner was attempting to release the valve, it suddenly opened, and he felt a sharp, sudden and severe pain to his back and shoulder, resulting in the injuries of which Petitioner now complains.

The uncontroverted testimony offered by Petitioner was that the subject valve was "stuck", and was not working in the manner in which it was intended at the time he was required to operate this valve. The evidence further established that, had the valve been functioning in its proper and intended manner, it would not have stuck, nor would there have been any problem in opening or closing this valve. In this regard, Petitioner testified that he was unaware that the valve would not function as intended at the time of his accident, and that he had no reason to suspect any trouble in the operation of the valve.

Ample evidence was introduced before the Court that it was not the duty of the Rig Mechanic aboard Rig 63 to conduct regularly scheduled inspections of the subject sump valve. Rather, Petitioner was only required to specifically repair these types of valves once he knew that a problem existed. The evidence thus reflected that Mr. Dixon had no reason to suspect that this valve would not properly work on the morning of July 6, 1983.

In consideration of the above-stated evidence, the jury returned a verdict in favor of Petitioner and against Defendant. Clearly, the jury concluded that Penrod had failed to discharge its duty to furnish Petitioner with a safe place within which to work. The Court properly denied Defendant's Motions for Directed Verdict, as there was clearly evidence presented before the Court to support the jury's verdict.

An appeal was taken to the United States Court of Appeals for the Fifth Circuit. The Court reversed and rendered with unpublished opinion (Appendix A, *infra*, pages 2a and 8a), which necessitated this Petition.

REASONS FOR GRANTING THE WRIT

By reversing and rendering the verdict of the jury, the Court below has, in effect, placed itself as the trier of fact, at least in the instant case.

The Jones Act has historically been interpreted as remedial legislation, extending to seamen the rights held by railroad workers under the Federal Employer's Liability Act. In this respect, the FELA standard of review has been applied to Jones Act cases, which are liberally construed in favor of injured seamen. See: *Ferguson v. Moore-McCormick Lines, Inc.*, 352 U.S. 521, 523, 77 S.Ct. 457, 458, 1 L.Ed.2d 511, 513 (1957). The quantum of evidence necessary to establish liability is much less in a Jones Act case (as in an FELA case) than it would be in an ordinary negligence case. *Robin v. Wilson Bros.*

Drilling, 719 F.2d 96 (5th Cir. 1983); *Heater v. Chesapeake & Ohio Railway Company*, 497 F.2d 1243 (7th Cir. 1974).

The burden of proving the Defendant's negligence is, of course, upon Petitioner, who must prove by a preponderance of the evidence that such negligence played some part, however small, in actually bringing about or causing the alleged injuries. It is not necessary that Petitioner prove that the negligence of the Defendant, or its employees, was the sole cause, or even the principal cause of Petitioner's injuries. All that is required is that Petitioner prove by a preponderance of the evidence that Penrod's negligence played some part, even a slight part, in causing Petitioner's injuries. See: *Rogers v. Missouri Pacific Railroad Company*, 352 U.S. 500, 506, 77 S.Ct. 443, 448, 1 L.Ed.2d 493 (1957).

The Court in *Rogers* at page 448 establishes the test of a jury case under the FELA (and Jones Act) as being:

> ". . . Simply whether the proofs justify with reason the conclusion that employer negligence played any part, *even the slightest*, in producing the injury or death for which damages are sought. It does not matter that, from the evidence, the jury may also with reason, on grounds of probability, attribute the result to other causes . . . Judges are to fix their sites primarily to make that appraisal and, if that test is met, are bound to find that a case for the jury is made out whether or not the evidence allows the jury a choice of other probabilities." (Emphasis supplied)

The "slightest negligence" standard has been repeatedly adopted and applied by the Fifth Circuit to evaluation of Jones Act proceedings. See: *Springborn v. American Commercial Barge Lines, Inc.*, 767 F.2d 89 (5th Cir. 1985); *Comeaux v. T. L. James & Company, Inc.*, 702 F.2d 1023 (5th Cir. 1983); *Allen v. Sea Coast Prod-*

ucts, Inc., 623 F.2d 355 (5th Cir. 1980). As Penrod must concede, Petitioner's burden of proving his case pursuant to the Jones Act is thus "featherweight", and all that is required is a showing of "slight negligence". See: *Davis v. Hill Engineering, Inc.*, 549 F.2d 314, 331 (5th Cir. 1977); *Holmes v. J. Ray McDermott & Company*, 734 F.2d 1110 (5th Cir. 1984); *Kratzer v. Capital Marine Supply, Inc.*, 490 F. Supp. 222 (M.D. La. 1980), *affirmed*, 645 F.2d 477 (5th Cir. 1982). These considerations have caused the Fifth Circuit to characterize Petitioner's burden in a Jones Act case as "minimal":

> "The submission of such a case to a jury requires a very low evidentiary threshold and even marginal claims are properly left for jury determination' ". *Caldwell v. Manhattan Tankers Corporation*, 618 F.2d 361, 363 (5th Cir. 1980), quoting *Leonard v. Exxon Corporation*, 581 F.2d 522, 524 (5th Cir. 1978), *cert. denied*, 441 U.S. 923, 99 S.Ct. 2032, 60 L.Ed.2d 397 (1979).

Applicability of these standards thus lead the Fifth Circuit to conclude as follows, in evaluating post-trial motions presented in a Jones Act case:

> "In keeping with this less demanding standard of proof of causation, the test for sufficiency of evidence in a Jones Act case also requires less evidence to support a finding and directed verdicts and J.N.O.V. motions are granted 'only when there is a complete absence of probative facts' to support a verdict." *Comeaux v. T. L. James & Company, Inc.*, *supra*, at p. 1024.

In this respect, the appropriate standard of review for this Court to test the sufficiency of the evidence in a Jones Act claim is whether there is a "reasonable evidentiary basis" for the jury's verdict. *Thezan v. Maritime Overseas Corporation*, 708 F.2d 175 (5th Cir. 1983), *cert. denied*, 464 U.S. 1050, 104 S.Ct. 729, 79 L.Ed.2d 189 (1984). In those circumstances where there is an evidentiary basis for the jury's verdict, then the Appel-

late Court's function is exhausted and the Defendant is not free to relitigate the factual dispute. See: *McBride v. Laughlin Brothers Company*, 422 F.2d 363 (5th Cir. 1970). The Fifth Circuit thus continues to allow a jury verdict to stand unless there is a complete absence of probative facts to support it. *Perry v. Morgan Guaranty Trust of New York*, 528 F.2d 1378, 1379 (5th Cir. 1976). As the Fifth Circuit has recently held:

> "Therefore, when the Defendant moves for a directed verdict, we deny it and let the case go to the jury if there is slight evidence supporting the Plaintiff. Similarly, we deny the Defendant's Motion for J.N.O.V. if the jury has decided for the Plaintiff and the Defendant seeks to escape the verdict." *Springborn v. American Commercial Barge Lines, Inc., supra*, at p. 99.

Incredibly, Penrod, in the instant case, contends that the record is devoid of any evidence whatsoever as to Penrod's substantial negligence. Such a position is preposterous. Certainly, there is considerable evidence and testimony of the record of this matter that supports a finding of negligence, and consequently liability, of Defendant Penrod. Petitioner established that the valve in question was, in fact, stuck at the time Plaintiff attempted to throw said valve, that Penrod was negligent by allowing the valve to be in that condition, and that the defective valve played some part, even the slightest, in producing Petitioner's injuries.

The finding of the Court below has completely ignored the long-established principles set out in *Rogers v. Missouri Pacific Railroad Company, supra*, and the numerous cases since. To do so was error, which is the basis of this appeal.

The Court below found that Petitioner failed to produce any evidence to establish the existence of negligence by Penrod in failing to provide Petitioner with a safe place to work. In other words, after reviewing the evi-

dence, it came to a different factual conclusion than that derived by the jury.

In its opinion, the lower Court found that . . . "a Rig Mechanic's job on a drilling rig includes inspecting, maintaining, and repairing equipment on the rig and requires considerable mechanical skills. Rig Mechanics routinely perform tasks far more demanding than opening sump valves." (Opinion, p.5) Such language suggests that the Plaintiff assumed the risk that might be inherent in his position.

In citing *Hussein v. Isthmian Lines, Inc.*, 405 F.2d 946 (5th Cir. 1968), the lower Court stated that Petitioner was under a duty to use ordinary care in selecting or using one tool over another. At the moment of his injury, Petitioner was using the "only tool" (T-tool) provided and located in the compartment. He was *not* aware of any problems during the few seconds involved in opening the valve and injuring himself. However, the jury did find Petitioner 50% contributorily negligent, which certainly takes into account this particular theory of the lower Court. Petitioner would refer to the statement of the Supreme Court in *Tennant v. Peoria & Pekin Union Railway Company*, 321 U.S. 29, 64 S.Ct. 409, 88 L.Ed.2d 520 (1944):

> "It is not the function of a court to search the records for conflicting circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences. The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instruction, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable . . .

> *That conclusion, whether it relates to negligence, causation or any other factual matter cannot be ignored. Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences and conclusions or because judges feel that other results are more reasonable.*" *Id.* at p. 412 (Emphasis supplied)

Yet, this is precisely what the lower Court did in its finding. In essence, the lower Court inquired into the presumptions and inferences that flowed from the jury's finding of negligence. However, it is a cardinal principle of jurisprudence that an Appellate Court is *not* allowed to speculate as to the thought process of the jury. *Thezan v. Maritime Overseas Corporation*, 708 F.2d 175 (5th Cir. 1983), cert. denied, 464 U.S. 1050, 104 S.Ct. 729, 79 L.Ed.2d 189 (1984).

In the deliberation of the FELA and Jones Act cases, the trier of fact is customarily allowed a measure of speculation and conjecture to settle the dispute by choosing the most reasonable inferences. See: *Sweeney v. American Steamship Company*, 491 F.2d 1085, 1089 (6th Cir. 1974). Only when there is a complete absence of probative facts to support the conclusion reached does reversible error appear.

Petitioner avers that the evidence produced before the trial Court demonstrated that Penrod required its employees to work in a potentially dangerous and hazardous condition while failing to take even the slightest degree of care to insure that Rig 63, and specifically the sump valves situated thereon, constituted a safe place in which to work. Had Penrod exercised reasonable care in this case which should have been expected of it, Petitioner certainly could have known of the existence of the defect or the problem itself could have been eliminated. Penrod's failure to properly furnish Petitioner with a safe place in which to work thus supports the jury's finding that Penrod was negligent under the Jones Act.

Of course, even if Petitioner's injuries resulted in part from his own negligence, whether in failing to carry out his duties or in some other respect, such negligence would only reduce, not bar, recovery unless Penrod was not negligent at all. See: *Kendrick v. Illinois Central Gulf Railroad Company*, 669 F.2d 341 (5th Cir. 1982); *Thezan v. Maritime Overseas Corporation*, *supra*. In this case, the jury carefully weighed the evidence, both with respect to Penrod's negligence, and Defendant's claims that Petitioner was himself contributorily negligent. After deliberating for more than three (3) hours, the jury returned its verdict finding that Petitioner was fifty (50%) percent contributorily negligent. Clearly, the very fact that the jury found Petitioner to have contributed one-half (½) to his own injuries best reflects the care and consideration given by the jury to the evidence adduced below.

In the case of *Kendrick v. Illinois Central Gulf Railroad Company*, *supra*, cited by Penrod, the Petitioner had injured himself by falling and tripping over objects which he was charged with the duty of maintaining. The Defendant railroad argued that Kendrick could not recover on his FELA claim for the reason that he should not be allowed to take advantage of his failure to perform the duties assigned to him by the railroad. The Court reversed the Judgment rendered in Kendrick's favor because of the inclusion of an improper instruction to the jury; however, the Court confirmed that Kendrick's negligence, if any, could *not* bar recovery unless the employer was without negligence.

Comparably, the Fifth Circuit case of *Thezan v. Martime Overseas Corporation*, *supra*, likewise confirms that an employee's breach of a duty owed to his employer cannot proscribe recovery pursuant to the Jones Act. Thezan sued under the Jones Act on the grounds that his injuries were caused by the negligence of his employer, and sought recovery under the maritime

theory of unseaworthiness. The jury returned a verdict finding the subject vessel seaworthy, but holding Thezan's employer negligent. However, the jury likewise found Thezan's own negligence made a ninety (90%) percent contribution to his injury, thus reducing his damage award to $6,000.00. Thezan appealed.

The Court routinely affirmed the jury's verdict. Even though Thezan was found to be ninety (90%) percent contributorily negligent, and the jury denied his claim for unseaworthiness, the Court concluded that there was a "reasonable evidentiary basis" for the jury's verdict. *Thezan v. Maritime Overseas Corporation, supra,* at p. 181.

By returning a verdict in favor of Petitioner, the jury herein concluded that the evidence presented at trial supported Petitioner's contention that Penrod was negligent and that this negligence was a cause, however slight, for Petitioner's resulting injuries. Penrod thus violated its duty to provide Petitioner with a safe place within which to work as required by the Jones Act, and is thereby responsible for the resulting damages.

Petitioner respectfully avers that the lower Court erred in its original Opinion to the extent that the Court may have relied upon the argument advanced by Penrod that Petitioner's job, as a Rig Mechanic, would have encompassed the duty to repair the valve which caused his injury. Certainly, the jury was given a fair and equitable opportunity to decide upon the issues of Petitioner's accident and their findings are clearly supportable by the law and the evidence.

With all due respect to the lower Court's Opinion, Petitioner must argue that not only was *Rogers, supra,* and its successor cases totally ignored, they were totally omitted from consideration. The Opinion was not published. If it had been published, it would have, without question, severely clouded existing law.

CONCLUSION

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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July 25, 1988

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APPENDIX

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-3296

JAMES E. DIXON,
Plaintiff-Appellee,

versus

PENROD DRILLING CO.,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING
(April 26, 1988)

Before KING and DAVIS, Circuit Judges, FELDMAN, District Judge.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ W. Eugene Davis
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-3296

JAMES E. DIXON,
Plaintiff-Appellee,
versus
PENROD DRILLING CO.,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
CA-86-2719-LLM (5))

(March 30, 1988)

Before KING and DAVIS, Circuit Judges, FELDMAN,* District Judge.*

DAVIS, Circuit Judge:

Penrod Drilling Company appeals the district court's denial of its motion for Judgment Notwithstanding the Verdict (NOV) after a jury awarded James Dixon dam-

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* District Judge of the Eastern District of Louisiana, sitting by designation.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burden on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

ages under the Jones Act for personal injuries sustained while employed on a Penrod drilling rig. Finding no probative facts to support the verdict, we reverse.

I.

In July 1983, James Dixon was employed as a rig mechanic aboard the PENROD 63, which was drilling for oil off the coast of Louisiana in the Gulf of Mexico. As a rig mechanic, Dixon was responsible for the general maintenance and repair of mechanical equipment located aboard the rig. At the time of his injury, Dixon had been employed in this capacity for approximately five years aboard various Penrod drilling rigs.

On July 6, 1983, Dixon was working near the rig's engine room when he noticed that water had accumulated in the engine room "sump." A "sump" is a cavity located below the deck that serves as the accumulation and drainage point for water from a particular compartment of the rig. The accumulation of water in the sumps is not unusual because water used to clean the deck or machinery ordinarily drains into the sumps. Dixon was often called upon to drain such accumulations of water through a series of "sump valves." To drain the engine room deck, Dixon was required to release the "sump valve" in the air compressor room of the rig. The sump valve, which is located at the base of the sump, is operated by turning a round handle on top of the valve that extends above the sump floor. To turn the valve handle and open the sump valve, the mechanic engages and turns the valve handle with a T-tool. The T-tool is a simple device (not unlike a car lug wrench) that consists of a three-foot rod with prongs on one end, that engages the valve handle, and a one-foot horizontal bar on the opposite end which the mechanic grasps to rotate the tool. Using a "T-tool," Dixon attempted to open this sump valve by engaging the valve with the T-tool and twisting on the T-tool bar. On Dixon's third twist of the

tool, the valve suddenly opened, causing Dixon to shift his weight and slip. Dixon hurt his back as a result of this incident for which he received extensive treatment, including an unsuccessful surgery.

Dixon sued Penrod under the general maritime law and the Jones Act, 46 U.S.C. § 868 et seq., seeking damages for his injuries. The district court denied Penrod's motion for directed verdict and, in response to special interrogatories, the jury found that the PENROD 63 was seaworthy but that Penrod was negligent and that this negligence was the legal cause of Dixon's injury. The jury also found Dixon fifty-percent negligent in causing his injury. Damages were assessed at $501,706. Discounting for Dixon's contributory negligence, the district court entered judgment on the verdict in favor of Dixon in the amount of $250,853. Penrod then moved for a judgment NOV which was denied by the district court. Penrod now appeals from the district court's denial of its motion for judgment NOV.

Appellate review of a jury verdict under the Jones Act is much narrower than in an ordinary negligence claim. A directed verdict or judgment NOV on a Jones Act claim is only appropriate when the court finds a complete absence of probative facts to support the nonmovant's position. Springborn v. American Commercial Barge Lines, Inc., 767 F.2d 89, 98 (5th Cir. 1985); Comeaux v. T. L. James & Co., Inc., 666 F.2d 294, 298 n.3 (5th Cir. 1982). With this standard in mind, we now turn to a review of the record evidence to determine whether the district court erred in denying Penrod's motion for judgment NOV.

Dixon argues that the jury was entitled to find that the sump valve was "stuck" and Penrod was negligent in allowing the valve to be in that condition. Dixon suggests that Penrod could have prevnted this stuck valve by instituting an inspection program designed to periodically check the valves and lubricate them if they were

stuck. Dixon also argues that Penrod was negligent in not checking the sump valves after the PENROD 63 was reactivated following an unspecified period in which the rig was inactive.

In order to find that Penrod was negligent, the jury necessarily found that Penrod was not entitled to rely on its rig mechanics to use available tools to open the sump valves without injuring themselves. Instead, the jury obviously found that Penrod had a duty to inspect and maintain the sump valves so that they turned without difficulty.

We note initially that, although we analyze the facts of this case as though the sump valve was "stuck", Dixon testified that the difficulties he encountered with this valve were not extraordinary. He testified that he usually turned the valve handle after giving the tool one or two "jerks." On this occasion, the valve turned on Dixon's third jerk of the tool.

A rig mechanic's job on a drilling rig includes inspecting, maintaining, and repairing equipment on the rig and requires considerable mechanical skills. Rig mechanics routinely perform tasks far more demanding than opening sump valves. Before Dixon went to work for Penrod, he worked as an auto mechanic from 1966 to 1978. With this background of thirteen years as a mechanic, Dixon was hired by Penrod as a rig mechanic. Before the accident, Dixon worked on a variety of Penrod rigs for about five years.

We are persuaded that the jury had no basis to find that Penrod was unreasonable in expecting an experienced rig mechanic to use available tools to safely perform the simple task of turning a sump valve without overexerting himself. We have made it clear that "these [are] circumstances under which a seaman is under a duty to exercise ordinary care in selecting or using one tool over another, say for instance, where the vessel

owner has furnished a number of tools, each being fit for its particular phase of a multi-phased operation being performed by the seaman." Hussein v. Isthmian Lines, Inc., 405 F.2d 946, 949 (5th Cir. 1968). "When tools are close at hand which could safely perform a task, a seaman has a duty to use them." Robinson v. Zapata Corp., 664 F.2d 45, 49 (5th Cir. 1981).

Dixon admitted that a number of remedial measures were available to a rig mechanic if he encountered a stuck sump valve. When a mechanic cannot turn a valve without overexerting himself, the witnesses testified that a mechanic would ordinarily use a "cheater" pipe to increase his leverage. These cheater pipes (pipes with a larger diameter and length than the tool handle that slied over the tool handle) are readily available to rig mechanics. Pipe wrenches are also available on the rig and can also be used to gain added leverage to turn the valve handle. In addition to these tools, which Dixon admitted were readily available, Dixon testified that a mechanic could obtain assistance from other members of the rig crew if a valve were difficult to open.

Dixon's contention that Penrod was unreasonable in failing to establish a periodic inspection and maintenance program to insure that the valves would turn readily is also unsupported by the record. In the corrosive atmosphere of the Gulf of Mexico a drilling rig will have many valves, nuts, bolts, and other connections on its equipment that will not always turn with ease and may require added effort. This is particularly true with a valve that is frequently under water.

Penrod's reliance on its mechanics to deal with stuck valves when they encounter them was not unreasonable. The suggested maintenance program would require Penrod to assign rig mechanics to periodically check all of the rig's sump valves (presumably along with nuts, bolts, and other myriad connections) to be certain that

they are not stuck. However, checking the valves requires the rig mechanics to do precisely what Dixon did in opening the valve in this case—attempt to turn the valve handle with a T-tool. In both instances, if the valve is stuck and the mechanic does not use proper tools, he may injure himself.

After a careful review of the record, we are unable to find a single probative fact to support the jury's finding of negligence on the part of Penrod. The district court erred in denying Penrod's motion for judgment NOV. The judgment of the district court is therefore

REVERSED and RENDERED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-3296

D. C. Docket No. CA-2719-LLM (5)

JAMES E. DIXON,
Plaintiff-Appellee,

versus

PENROD DRILLING CO.,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana

Before KING and DAVIS, Circuit Judges, FELDMAN,* District Judge.*

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is reversed and rendered, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that plaintiff-appellee pay to Defendant-appellant the costs on appeal, to be taxed by the Clerk of this Court.

March 30, 1988

Issued as mandate: May 6, 1988

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* District Judge of the Eastern District of Louisiana, OP-JDT-11 sitting by designation.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 86-2719
Section "LLM"

JAMES E. DIXON

versus

PENROD DRILLING COMPANY

JUDGMENT

This action came on for trial before the Court and a Jury, the Honorable Lansing L. Mitchell, Senior United States District Judge, presiding, and the issues having been duly tried and the Jury having duly rendered its verdict, considering its answers to the Interrogatories propounded by the Court to the Jury under date of February 11, 1987.

IT IS ORDERED, ADJUDGED AND DECREED that there be Judgment rendered herein in favor of plaintiff, James E. Dixon, and against defendant, Penrod Drilling Company, in the amount of TWO HUNDRED FIFTY THOUSAND EIGHT HUNDRED FIFTY-THREE AND NO/100 ($250,853.00) DOLLARS with legal interest from date of Judgment and for the recovery of his costs incurred in the instant action.

New Orleans, Louisiana, this 19th day of February, 1987.

/s/ Lansing L. Mitchell
Senior United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 86-2719

Section "LLM"

JAMES DIXON

versus

PENROD DRILLING COMPANY

INTERROGATORIES PROPOUNDED TO THE JURY

1. Do you find a preponderance of the evidence that defendant Penrod Drilling Company, was negligent in the manner claimed by the plaintiff and that such negligence was a legal cause of the plaintiff's damages?

   Please answer Yes or No. Yes X No _____

   Please answer Question No. 2.

2. Do you find from a preponderance of the evidence that Penrod Rig No. 63 was unseaworthy in the manner claimed by the plaintiff and that such unseaworthness was a legal cause of plaintiff's damages?

   Please answer Yes or No. Yes _____ No X

   If your answers to Questions No. 1 *and* 2 are No, do not answer the remaining questions. Please sign and date the form.

   If your answer to Questions No. 1 *or* 2 is Yes, please answer Question No. 3.

3. Do you find from a preponderance of the evidence that the plaintiff was negligent and that such negligence contributed to his injury?

Please answer Yes or No. Yes X No ____

If your answer to Interrogatory No. 3 is "Yes", please proceed to Interrogatory No. 4.

If your answer to Interrogatory No. 3 is "No", please proceed to Interrogatory No. 5.

4. To what extent, expressed as a percentage, did the negligence of the plaintiff, if any, contribute to his injuries?

Please answer in terms of percentage. 50 %

5. Without deducting any amount for negligence you may have found on the part of the plaintiff, what amount if any, do you find would fairly and adequately compensate plaintiff for the following:

A.	Past Loss Wages	$ 81,138.
B.	Loss of Future Earning Capacity	$295,568.
C.	Past Physical and Mental Pain and Suffering	$ 30,000.
D.	Future Physical and Mental Pain and Suffering	$ 35,000.
E.	Permanent Physical Disability	$ 60,000.
	Total of 5 A.-E., above	$501.706.

Please proceed to Question No. 6.

6. If you answer "No" to *either* Interrogatory No. 1 *or* Interrogatory No. 2, do not answer the remaining interrogatory but, instead, please sign and date the form.

If you answered "Yes" to Interrogatories Nos. 1 *and* 2, please answer the following question:

Please express as a percentage that amount which you find from a preponderance of the evidence that plaintiff's injury was caused by negligence of Penrod Drilling Company and that percentage which was caused by the unseaworthiness of Penrod Rig No. 63.

Negligence ————%

Unseaworthiness ————%

New Orleans, Louisiana
This 11 day of February, 1987.

/s/ Mark K. Mauer
Foreman or Forelady